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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,331	07/02/2001	Job Cornelis Oostveen	NL000409	2099

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER

ORTIZ CRIADO, JORGE L

ART UNIT	PAPER NUMBER
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2655

DATE MAILED: 06/03/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/897,331

Applicant(s)

OOSTVEEN ET AL.

Examiner

Jorge L Ortiz-Criado

Art Unit

2655

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 May 2004 ^{5/5/04} FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

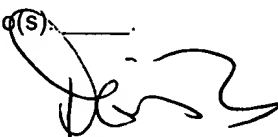
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-16.

Claim(s) withdrawn from consideration: _____.

8. ☒ The drawing correction filed on 06 May 2004 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s): _____.
10. ☐ Other: _____



DORIS H. TO
SUPERVISORY PATENT EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Response to Arguments

1. Applicant's arguments filed May 06, 2004 have been fully considered but they are not persuasive.

Applicant's response to the finality of the March 23, 2004 Office Action with respect to claim 4-7.

Applicants argue that the finality of the March 23, 2004 Office Action was premature because of new grounds of rejection. Applicant relies on a cited portion submitted in the previous Non-Final Office Action dated August 26, 2003 ("col. 6, lines 56-62, col. 7, lines 10-13; Figs. 3, 27") and the cited portion submitted in the Final Office Action dated March 23, 2004 ("col. 6, lines 56-52; col. 7, lines 22 to col. 8, line 35"). The Examiner cannot concur because:

The Examiner wants to call the attention to the that the cited portion upon which Applicant relies in the arguments ("col. 6, lines 56-62, col. 7, lines 10-13; Figs. 3, 27") is not completely recited as submitted in the prior Office Action dated August 26, 2003, which also include the cited portions "lines 33-47" of the same cited col. 7)

The cite portions submitted on the Non-Final Action and the cited portions submitted on the Final Action including the cited portions excluded in Applicant's arguments (i.e. lines 33-47" of the same cited col. 7"), are merely examples of portions where the explanations with regard to the Figures 2, 3, and 27 and the features of the claims as cited, are found. In considering the disclosure of a reference, it is proper to take into account not only the specific example cited portions by the Examiner, but also taking consideration of the evidence relied upon in support of the rejection, in this case the further explanations of the figures cited by the Examiner.

The cited portions submitted in the Final Action are merely examples cited portions of the same reference figures, same explanation of the figures and same teachings and/or embodiments in the reference applied in the previous Non-Final Action, and were necessitated by Applicant's arguments response to the Non-Final Action dated August 26, 2003.

There is no new ground of rejection when the basic thrust of the rejection remains the same such that an applicant has been given a fair opportunity to react to the rejection. See *In re Kronig*, 539 F.2d 1300, 1302-03, 190 USPQ 425, 426-27 (CCPA 1976).

Where the statutory basis for the rejection remains the same, and the evidence relied upon

in support of the rejection remains the same, a change in the discussion of, or rationale in support of, the rejection does not necessarily constitute a new ground of rejection. *Id.* At 1303, 190 USPQ at 427.

Applicant's response to the to claims 1-16 as unpatentable over Maeda et al.

Applicants argued that Maeda et al. does not disclose or suggest the phase of the second variations being coupled to the phase of the first variations

The Examiner cannot concur because Maeda et al. discloses the phase of the second variations (wobble track 270 in the borders 14, 15) being coupled to the phase of the first variations in that a predetermined number of wobbles (second variations) correspond to a predetermined number of channel bits represented by the first variations (information marks) (See col. 7, line 22 to col. 8, line 35; Figs. 3, 27).

The predetermined number of wobbles (second variations), correspond to a predetermined number of channel bits represented by the information marks (274) simultaneously coupled with each other (See col. 8, line 18-19; Fig. 3, 27)

The Examiner wants to call the attention that the feature of the phase of the second variations being coupled to the phase of the first variations its also the phase of the second variations (wobble track 270 in the borders 14, 15) being coupled to the phase of the first variations (information tracks) in that a predetermined number of wobbles (second variations) correspond to a predetermined number of channel bits represented by the first variations, see Applicant's specification page 5, line 34 to page 6, line 3), as taught by Maeda et al.

Applicants argued that Maeda does not disclose or suggest the second variations as recited having a first or a second phase with respect to the first variations.

The predetermined number of wobbles (second variations caused by variations associated with the information marks), correspond to a predetermined number of channel bits represented by the information marks (274) simultaneously coupled with each other. (See col. 8, line 18-19; Fig. 3, 27); (See col. 7, line 22 to col. 8, line 35; Figs. 3)

The Examiner cannot concur because Maeda et al. discloses the phase of the second (second variations caused by variations associated with the information marks) variations being coupled to the phase of the first variations in that a predetermined number of wobbles correspond to a predetermined number of channel bits represented by the first variations and having a first or a second phase in which the first and the second phase differs with 180 degrees (See col. 7, lines 42-46); (See col. 7, line 22 to col. 8, line 35; Figs. 3)

Applicants argued that Maeda et al. does not disclose or suggest predetermined variation pattern allows sampling if said second variations at twice the frequency of said second variations

The Examiner cannot concur because Maeda et al. discloses variations being coupled to the phase of the first variations in that a predetermined number of wobbles correspond to a predetermined number of channel bits represented by the first variations and having a first or a second phase in which the first and the second phase differs with 180 degrees, hence predetermined variation pattern allows sampling if said second variations at twice the frequency of said second variations. As also required by Applicant (See page 7, lines 11-14)

Applicants argued that Maeda et al. does not disclose or suggest said second variation have a first and a second phase such a predetermined relationship between said first and second phase coincides to a start of frame.

The Examiner cannot concur because Maeda et al. discloses the tracks divided in blocks/(sectors), which includes frames of a predetermined number of bits and as shown in Fig. 2 of Maeda et al. shows the predetermined relationship between said first and second phase coincides to a start of frame (start of block)..